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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/978,132	10/16/2001	Steven Curtis Zicker	IR 6562-02	3795

23909 7590 05/20/2003

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EXAMINER

SPIVACK, PHYLLIS G

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 05/20/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/978,132

Applicant(s)  
Zicker et al.

Examiner  
Phyllis G. Spivack

Art Unit  
1614



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Apr 29, 2003
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 12-22, 26, and 28-31 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-22, 26, and 28-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 15 6) ☐ Other:

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Applicants' Request for Continued Prosecution filed April 29, 2003, Paper No. 13, is acknowledged and accepted. Claims 1-11, 23-25 and 27 are canceled and new claims 30 and 31 are presented in Paper No. 14, filed April 29, 2003. Accordingly, claims 12-22, 26 and ~~28~~-31 are presently under consideration.

An Information Disclosure Statement filed April 29, 2003, Paper No. 15, is further acknowledged and has been reviewed.

Subsequent to the cancellation of claims 1-11, 23-25 and 27, the rejections of record in the last Office Action under both 35 U.S.C. 103 and U.S.C. 102(b) relating to Paul et al., WO 94/02036, are moot.

In the last Office Action claims 1-29 were rejected under 35 U.S.C. 103 as being unpatentable over Hamilton et al., WO 01/58271. This rejection of record is withdrawn in favor of Hamilton, N.D., U.S. Patent 6,335,361.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12-22, 26 and 28-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hamilton, N.D., U.S. Patent 6,335,361.

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Hamilton teaches the administration of pet food formulations comprising  $\alpha$ -lipoic acid, l-carnitine and vitamins C and E to improve mental acuity and to treat cognition disorders associated with aging. See column 6, lines 58-60, and column 8, lines 37-40, as well as column 10, lines 9-21. In particular, see the discussion concerning oxidative damage that occurs as part of the aging process, columns 7-8. The claims differ in that Hamilton does not recite the identical language as that of the present claims, i.e., "inhibiting the onset of deterioration of the mental capacity of an aged companion pet", "increasing the mental capacity of an adult companion pet", "improving the companion pet's ability in aged years to resist oxidative damage" in its adult or aged years, "inhibiting the loss of learning ability" and "increasing the learning ability of an adult companion pet". However, one skilled in the veterinarian art would have been motivated to administer a formulation comprising antioxidants that are known to treat cognition deficits to a companion pet to resist oxidative damage and inhibit deterioration of mental capacity in view of Hamilton's teachings. Such would have been obvious in the absence of evidence to the contrary because the methods of treatment disclosed by Hamilton, i.e., treating cognition disorders associated with the aging process, treating cognition deficits, improving mental acuity, improving memory in aged subjects, through the administration of antioxidants, essentially are directed to the same methods as those herein claimed. The determination of optimal concentrations of the active ingredients is a parameter well within the purview of those skilled in the art of formulation chemistry through no more than routine experimentation.

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In the last Office Action claims 1, 2, 12, 13, 26 and 27 were rejected under 35 U.S.C. 102(a) as being anticipated by Milgram et al., Internet site.

Claims 1, 2 and 27 are canceled. No response is noted to this rejection in Paper No.14.

Accordingly, this rejection of claims 12, 13 and 26 is repeated for the reasons of record.

No claim is allowed.

Any inquiry concerning this communication should be directed to Phyllis Spivack at telephone number 703-308-4703.

May 18, 2003

*Phyllis Spivack*

**PHYLLIS SPIVACK  
PRIMARY EXAMINER**